IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Bail Appl..No. 5686 of 2007()

`CRIME NO. 580/07 OF THIRUVALLA POLICE STATION

PETITIONER/ACCUSED

SURENDRAN,AGED 40,RESIDING AT SURAJ BHAVAN,CHALLKUZHY MURI,AZHIYIDATHCHIRA P.O, KAVUMBHAGAM VILLAGE,THIRUVALLA TALUK.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.AJITH MURALI

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5686 of 2007

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Dated this the 1st day of October, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations for the offence punishable under Section 326 I.P.C. On account of prior animosity, the petitioner had allegedly attacked the defacto complainant with a dangerous weapon - wooden stick - resulting in fracture of the nasal bone of the victim. The victim was allegedly proceeding on a bicycle when he was attacked on 25.8.2007. The F.I. statement was seen recorded at the hospital only on 4.9.2007. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are false. The victim had actually fallen from a bicycle and had suffered the injuries. He was initially admitted to another hospital. The wound certificate issued from that hospital has not been seized. A different allegation was raised before that doctor. There is delay in lodging the F.I. statement also, submits the counsel.

3. The learned Prosecutor opposes the application. The allegations are serious. The victim had suffered fracture of the nasal bone. The allegations clearly reveal the complicity of the petitioner. It is true that the victim was taken to a local hospital because of profused bleeding and then he was taken to the Medical College, where the petitioner was admitted on the same day. In the wound certificate it is clearly stated that the alleged cause of injury was assault and not mere fall from the bicycle. Even going by the averments in the F.I. statement, the allegation is that the victim, who was travelling on a bicycle, was attacked and he fell from the bicycle. In these circumstances the learned Prosecutor submits that there is absolutely no justification in the prayer for invocation of the discretion under Section 438 Cr.P.C.

4. I find merit in the opposition by the learned Prosecutor. I am unable to find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. That the victim was taken to the local hospital before he was rushed to the Medical College hospital is of no significance as the allegation to the doctor at the Medical College hospital supports the present stand of the victim. That the police did not promptly record the F.I. statement is again of no

consequence, the alleged version having been narrated to the doctor on the date of the occurrence itself. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate having jurisdiction and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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